

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 5101 PCB PKAS 11-03 Prekindergarten through Grade 12 Education Funding
SPONSOR(S): PreK-12 Appropriations Subcommittee, Coley
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: PreK-12 Appropriations Subcommittee	8 Y, 3 N	Seifert	Heflin
1) Appropriations Committee	14 Y, 6 N, As CS	Seifert	Leznoff

SUMMARY ANALYSIS

The bill amends statutory provisions necessary to conform the statutes to appropriations made in the General Appropriations Act for the 2011-2012 fiscal year.

The bill amends statutes relating to:

- Aligning Charter School Capital Outlay statutes with changes made during the 2010 legislative session;
- Allowing systems of charter schools meeting certain requirements to be considered a local educational agency for the purpose of receiving federal funds;
- Requiring school districts to report to the DOE the amount spent per FTE for contracts for virtual instruction;
- Requiring the difference in the amount spent and the amount earned through the FEFP for students in school district virtual instruction programs to be used to purchase technology in the school district;
- Modifying student teacher ratio requirements in the Voluntary Prekindergarten Program to maximize VPK funds and provide flexibility for VPK providers;
- Modifying the administrative rate for the early learning coalitions from 4.5% to 4% to maximize VPK funds and provide flexibility for VPK providers;
- Clarifying the definition of core courses to be counted for class size compliance;
- Allowing students enrolling in classes after the October student membership survey to be placed in existing classrooms provided that the district prepares a plan that describes how the district will be in compliance the following year;
- Allowing compliant districts flexibility in use of their class size reduction operation categorical funds;
- Identifying variable bonus weights, to be used in the FEFP industry certification bonus add-on, based on the difficulty of obtaining the industry certification and the value of having the industry certification in terms of employment and wage earning capability;
- Modifying the bonus weight for public school students in the Florida Virtual School;
- Codifying and changing the name of learning management system to local instructional improvement system to align with the minimum standards of Race to the Top;
- Replacing the word "textbook" with "instructional material" to allow for multiple delivery options of instructional materials;
- Restructuring the instructional materials adoption process to require reviewers to only evaluate electronic format of materials; defining electronic and digital formats; and providing dates to incorporate digital materials in the classroom;
- Aligning terminology with the restructuring of the instructional materials adoption process and modifying bid specifications;
- Requiring school districts to use 50% of the instruction materials categorical for the purchase of electronic or digital materials by the 2012-2013 school year and providing flexibility in the materials purchased with the remaining 50% of funding;
- Repealing school districts authority to levy additional discretionary millage; allowing the 16 school boards that received voter approval of the referendum on the 2010 general election to levy, by supermajority vote, the 0.250 mill for the 2011-2012 and 2012-2013 fiscal years; and clarifying that revenues from the 0.250 mill will not be included in the FEFP;
- Increasing the amount that school districts may expend per unweighted FTE student from the revenue generated by the levy of local capital improvement millage from \$100 to \$200 per FTE; Clarifying the types of insurance premiums that may be paid from revenue generated by the levy; and
- Authorizing the Commissioner of Education to waive the equal-dollar reduction for audit findings in 2008-2009 and 2009-2010 related to school district use of local capital improvement revenue for worker's compensation insurance premiums and software.

The bill aligns priority to funding for the core mission of classroom instruction.

Except as otherwise specifically provided, the bill takes effect July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h5101a.APC

DATE: 3/31/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Charter Schools

A charter school is not eligible for a capital outlay funding allocation if it was created by the conversion of a public school and operates in facilities provided by the charter school's sponsor for a nominal fee, or at no charge, or it is directly or indirectly operated by the school district. Section 1002.33(15), F.S., provides that in order to reduce the school and classroom overcrowding and to offset the high cost of educational facilities, the formation of business partnership schools or satellite learning centers and municipal-operated schools through charter school status is encouraged. A charter school-in-the-workplace may be established when a business provides the school facility to be used; enrolls students based upon a random lottery that involves all of the children of employees of that business or corporation who are seeking enrollment and enrolls students according to racial/ethnic balances. Any portion of a facility used for a public charter school shall be exempt from ad valorem taxes, for the duration of its use as a public school. The bill aligns capital outlay funds authorized in s.1013.62, F.S., which have been shared with a charter school-in-the-workplace prior to July 1, 2010, to be considered to have met the authorized expenditure requirements for such funds. This change was made during the 2010 legislative session but the reference to s. 1013.62, F.S. was inadvertently omitted.

According to 20 USCS § 7801(26)(A), the term "local educational agency" (LEA) means "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools." The bill allows a charter school system to be considered an LEA for the purpose of receiving federal funds once the governing board of the system of charter schools has adopted and filed a resolution with the sponsoring school district and the Department of Education. The resolution must include that the governing board is of the charter schools system responsible for all LEA requirements and the charter school system meets all of the following:

- Includes both conversion charter schools and nonconversion charter schools;
- Has all schools located in the same county;
- Has a total enrollment exceeding the total enrollment of at least one school district in the state;
- Has the same governing board; and
- Does not contract with a for-profit service provider for management of school operations.

The bill relieves the school district of the LEA responsibility for the federal funds received by a system of charter schools and provides the responsibility to the charter schools system governing board.

Voluntary Prekindergarten student ratios

Current law states that each public and private prekindergarten class for the school year Voluntary Prekindergarten (VPK) program must be composed of at least four students but may not exceed 18 students. The bill changes the maximum number of students allowed in a voluntary prekindergarten class for the school year program from 18 to 20 students.

In order to protect the health and safety of students, each prekindergarten provider must provide appropriate adult supervision for students at all times. For each prekindergarten class composed of 11 or more students the classroom must have a prekindergarten instructor who has a child development associate (CDA) credential and at least one adult prekindergarten instructor who is of good moral

character and has been screened using the level two background screening required in s. 435.04, F.S.¹ The bill also requires classes composed of 12 or more students, rather than 11 or more students, to have instructors meeting these qualifications.

For the 2010-2011 fiscal year, each early learning coalition may retain and expend not more than 4.5 percent of the funds paid by the coalition to private kindergarten providers and public schools. The bill reduces the coalition administrative percentage from 4.5 percent to 4 percent.

School District Virtual Instruction Programs

Beginning with the 2009-2010 school year, each school district has provided eligible students within its boundaries the option of participating in a virtual instruction program. A 'virtual instruction program' (VIP) is a program that takes place in an interactive learning environment created through technology in which the student and teacher are separated from each other by time, space, or both. The law further specifies that Florida-certified teachers are primarily responsible for instructing the students. The purpose of this program is to make instruction available to district students using online and distance education technology in a nontraditional classroom, i.e., primarily outside of public school buildings. In practice, most students access the online instruction from their homes. This program provides an additional school choice option for parents and a tool districts can use to meet class size requirements.

Districts may:

- Contract with Florida Virtual School
- Establish a franchise of Florida Virtual School
- Contract with a provider approved by the Department of Education
- Enter into an agreement with another school district
- Enter into an agreement with a Florida community college

Contracts may include multidistrict agreements executed by a regional consortium for its member districts.

Districts may contract or enter agreements with more than one of the above entities to provide a school district VIP for their students. In addition, districts may operate their own program and may contract with these or other entities to provide segments of their program, such as the curriculum and/or learning management system. As with other educational options, the programs vary from district to district. However, students in all districts and at all grade levels have the option to participate in a fully-online educational program offered as a school choice option by their school districts.

The school district continues to generate Florida Education Finance Program (FEFP) funding from these students. The school district and provider determine in their contract how much of the funding per student the provider will receive.

The bill requires each school district to annually provide a copy of the contract and amounts paid per student to the Department of Education. The bill also requires the difference in funds received by the school district from the FEFP and the amount negotiated with the provider to be used for the district's local instructional improvement system or other technological tools that are required to access electronic and digital instructional materials.

Class Size Reduction

In November 2002, the Florida Constitution was amended to require the Legislature, beginning with the 2003-2004 fiscal year, to provide sufficient funds to reduce the average number of students per classroom by at least two students per year until the number of students per classroom does not exceed the maximums. By the beginning of the 2010 school year, the maximum number of students who may be assigned to each teacher who is teaching in a public school classroom may not exceed the following:

¹ s. 1002.55(3)(c), F.S.

- 18 for prekindergarten through grade 3;
- 22 for grades 4 through 8; and
- 25 for grades 9 through 12.²

The implementation schedule for reducing the number students per classroom by at least two students per year is as follows:³

- 2003-2004 through 2005-2006⁴ at the district level;
- 2006-2007 through 2009-2010⁵ at the school level; and
- 2010-2011 and thereafter, at the classroom level.

Since adoption of the class size reduction amendment, average class sizes have been reduced as follows:

District Average Class Size⁶

	<u>Grades PK-3</u>	<u>Grades 4-8</u>	<u>Grades 9-12</u>
2002-03	23.07	24.16	24.10
2003-04	20.54	22.43	24.06
2004-05	18.98	21.32	23.73
2005-06	18.16	20.48	22.96
2006-07	17.01	19.45	22.22
2007-08	16.28	18.76	21.39
2008-09	15.95	18.60	21.49
2009-10	16.39	18.91	21.94
2010-11	15.49	17.87	20.47

Beginning with the 2003-2004 General Appropriations Act, the Legislature has appropriated and allocated funds annually to school districts and charter schools to be used to reduce the average number of students per classroom by two students.

Class Size Reduction Funding History

Fiscal Year	Operating Appropriations	Fixed Capital Outlay Appropriations	Total Appropriations
2003-2004	\$468,198,634	\$600,000,000	\$1,068,198,634
2004-2005	\$972,191,216	\$100,000,000	\$1,072,191,216
2005-2006	\$1,507,199,696	\$83,400,000	\$1,590,599,696
2006-2007	\$2,108,529,344	\$1,100,000,000	\$3,208,529,344
2007-2008	\$2,640,719,730	\$650,000,000	\$3,290,719,730
2008-2009	\$2,729,491,033	\$0	\$2,729,491,033
2009-2010	\$2,845,578,849	\$0	\$2,845,578,849
2010-2011	\$2,913,825,383	\$0	\$2,913,825,383
Total Year to Date Appropriations	\$16,185,733,885	\$2,533,400,000	\$18,719,133,885

² s. 1(a), Art. IX of the State Constitution.

³ s. 1003.03(2), F.S.

⁴ Chapter 2003-391, L.O.F. established district level compliance for Fiscal Years 2003-2004 through 2005-2006. Chapter 2006-27, L.O.F. extended district level compliance to Fiscal Year 2006-2007.

⁵ Chapter 2003-391, L.O.F. established school level compliance for Fiscal Years 2006-2007 through 2007-2008. Chapter 2008-142, L.O.F. extended school level compliance to 2008-2009. Chapter 2009-59, L.O.F. extended school level compliance to 2009-2010.

⁶ Florida Department of Education, 2011 Legislative Information Request, January 2011

Florida law provides the statutory framework for making adjustments to appropriations for school districts that fail to meet required class size reductions. From 2003-2004 to 2005-2006, compliance was measured at the district level. For fiscal years 2006-2007 through 2009-2010 compliance has been measured at the school level. For fiscal year 2010-2011 compliance has been measured at the classroom level for traditional schools⁷ and at the school level for charter schools⁸. The adjustment is calculated by the Department of Education and verified by the Florida Education Finance Program Allocation Conference. The amount of funds adjusted is to be the lesser of the amount calculated or the undistributed balance of the district's class size reduction operating categorical. The Commissioner of Education may make a recommendation to the Legislative Budget Commission for an alternate amount of funds for the compliance calculation⁹, if the Commissioner of Education has evidence that a district was unable to meet the class size requirement despite appropriate efforts to do so.

For the initial calculation completed on December 29, 2010, 44,556 traditional public school classrooms in 35 school districts and 3 lab schools were not in compliance with class size requirements, for a potential total compliance adjustment amount from the class size operating categorical of \$40,795,637. Forty-four charter schools were not in compliance with school level class size requirements, for a potential total compliance adjustment amount from the class size operating categorical of \$2,292,191. The Commissioner reviewed evidence presented by school districts and charter schools, and determined data reporting errors and unexpected student growth were factors to be considered. On a date yet to be determined, the Commissioner of Education will recommend that the Legislative Budget Commission approve the alternate compliance calculation amounts of \$31,305,124 for traditional public schools and \$355,539 for charter schools.

Following approval of the alternate compliance calculation amounts by the Legislative Budget Commission, the Commissioner will reallocate a portion of the compliance calculation amounts to districts and charter schools that have fully met class size requirements.¹⁰ This reallocation may be up to 5 percent of the base student allocation multiplied by the total district FTE students, but cannot exceed 25 percent of the total funds reduced, resulting in a reallocation of \$7,826,281 for traditional schools and \$88,885 for charter schools. The funds remaining after the reallocation will be returned to districts and charter schools that were not in compliance with class size requirements, that submitted a plan by February 15, 2011 describing the specifications that will be taken to fully comply with class size requirements by October of the 2011-12 school year¹¹. For this year, all districts and charter schools not in compliance submitted a plan by the deadline, so that the remaining funds, or 75%, will be returned.

The bill redefines the terms "core-curricula" courses. Under current law, the DOE defines the courses as mathematics, language arts/reading, science, social studies, foreign language, English for Speakers of Other Languages, exceptional student education, and courses taught in traditional, self-contained elementary school classrooms.¹² Under the bill, these courses are specified by grade levels, subjects measured by state assessments, required high school graduation requirements, and subgroups of students. Pursuant to the bill, the following are "core –curricula courses":

- Language arts/reading, mathematics, and science courses in prekindergarten through grade 3;
- Courses in grades 4 through 8 in subjects that are measured by state assessment at any grade level;
- Courses in grades 9 through 12 in subjects that are measured by state assessment at any grade level;
- Courses that are specifically identified by name in statute as required for high school graduation and that are not measured by state assessments, excluding any extracurricular courses;

⁷ s. 1003.03(1), F.S.

⁸ s. 1002.33(16)(b)3., F.S.

⁹ s. 1003.03(4)(c), F.S.

¹⁰ s. 1003.03(4)(d), F.S.

¹¹ s. 1003.03(4)(e), F.S.

¹² Courses offered under ss. 1002.37 (the Florida Virtual School), 1002.415 (the K-8 Virtual School Program), and 1002.45 (the school district virtual instruction (VIP) programs), F.S., are excluded.

- Exceptional student education courses; and English for Speakers of Other Languages courses.

For a core-curricula high school course in which a student in grades 4 through 8 is enrolled for high school graduation credit, the maximum number of students for compliance purposes will be 25. Finally, the term “extracurricular courses” would also be expanded to include courses that may result in college credit. Current law specifies that these courses include physical education, fine arts, performing fine arts, and career education.

Florida high school students are currently required to complete 24 credits in order to earn a high school diploma. Students must also earn passing scores on the Florida Comprehensive Assessment Test (FCAT) or attain a passing score on the SAT or ACT. Beginning in the 2010-2011 school year, high school graduation requirements increase to include more rigorous courses. Students will be required to pass statewide, standardized end-of-course (EOC) assessments in specific courses beginning with the 2011-2012 school year. Beginning with students entering grade 9 in the following school years, courses include Geometry (2010-2011), Biology I (2011-2012), Algebra II (2012-2013), Chemistry or physics (2013-2014), and an additional equally rigorous science course (2013-2014).¹³

The DOE notes that in 2010-2011, there were 849 core courses. Under the current bill, there would be 288 core courses.¹⁴ The decrease would primarily be based on foreign languages, courses that may generate college credit, (for example, Advanced Placement and Dual Enrollment courses,) courses without state assessments, and courses that are not required for graduation at the middle and high school level.

Under the bill, a timeframe is specified for satisfying and maintaining class size maximums, with specific exceptions for an extreme emergency beyond the district's control and when a new student enrolls after the October student membership survey period. Based on a school district's determination that not assigning the student would be impractical, educationally unsound, or disruptive to student learning, a student could be assigned to an existing class that temporarily exceeds the class size maximums. However, the maximum number of students who can be assigned to a teacher may not exceed the following:

- Prekindergarten through 3rd grade, the number of students may not exceed 21;
- 4th grade through 8th grade, the number of students may not exceed 27; and
- 9th grade through 12th grade, the number of students may not exceed 30.

This temporary exception is also contingent upon a district school board's plan for providing that a school will be in full compliance with the maximum class size requirements by the following year's October survey.

Finally, the bill provides that only a school district that meets the maximum class size requirements may use the class size reduction operational categorical funds for any lawful operating expenditure.

Instructional Materials

Florida law currently requires the district school board to provide adequate instructional materials for all students. The term “adequate instructional materials” means a sufficient number of textbooks or sets of materials that are available in bound, unbound, kit, or package form and may consist of hard-backed or soft-backed textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software.¹⁵

¹³ See ch. 2010-22, L.O.F., codified in ss. 1003.428 and 1003.429, F.S.

¹⁴ March 15, 2011 email from DOE.

¹⁵ s. 1006.28(1), F.S.

State funding for instructional materials is provided annually in the General Appropriations Act in proviso as part of the calculation of the Florida Education Finance Program (FEFP).¹⁶ In the 2010-2011 fiscal year, \$216,918,478 was appropriated for instructional materials.¹⁷ Once the funds are distributed to the district school boards, each board must use at least 50 percent of the funds allocated to purchase instructional materials on the state-adopted list.¹⁸ A district school board may use the remaining 50 percent of the annual allocation to purchase materials, including library and reference books and nonprint materials, not included on the state-adopted list and for the repair and renovation of textbooks and library books.¹⁹ Under current law, state-adopted instructional materials and non state-adopted instructional materials have similar meanings. However, both definitions explicitly exclude the purchase of electronic or computer hardware even if such hardware is bundled with software or other electronic media, and exclude equipment and supplies.²⁰

Currently, school districts purchase computer equipment with state FEFP and capital outlay funds.²¹ Additionally, federal funding for fiscal year 2009-2010 included \$30.3 million for education technology from the American Recovery and Reinvestment Act of 2009 appropriated through the state's 2009-2010 GAA.²² The DOE was directed to implement a technology grant program for school districts to demonstrate the use of technology in teacher professional development and student instruction in science, technology, engineering, and mathematics (STEM) content areas. The student portion was to be used to incorporate the use of classroom laptops and personal learning devices that are mobile and able to extend learning beyond the classroom day. The teacher portion was to be used to combine the use of laptops and personal learning devices and must include the development and delivery of professional development linked to the newly adopted math and science standards.

In addition, federal entitlement funds are provided through the No Child Left Behind Title IID – Enhancing Education Through Technology program to school districts based on their Title I allocation.²³ School districts also have flexibility in the expenditure of categorical funding provided for specific purposes within the Florida Education Finance Program, including funding provided for instructional materials, but only after March 1, 2011,²⁴ and hardware is explicitly prohibited from being purchased with this source of funding.

On August 24, 2010, Florida was named a winner of \$700 million in phase 2 of the federal Race to the Top²⁵ education reform competition.²⁶ As funded, fifty percent of the state's total award will be

¹⁶ The Florida Education Finance Program (FEFP) is the mechanism used by the state to fund the operating costs of Florida's school districts. *See* s. 1011.67, F.S. and s. 1011.67(1), F.S.

¹⁷ Specific Appropriation 78, § 2, ch. 2010-152, L.O.F.

¹⁸ For purposes of state adoption, "instructional materials" means items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. Any instructional materials adopted after 2012-2013 for students in grades 9 through 12 shall also be provided in an electronic format. The term does not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies. s. 1006.29(4), F.S., and s. 1006.40(3)(a), F.S.

¹⁹ Items not on the state-adopted list must be used to purchase instructional materials or other items having intellectual content which assist in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, replacements for items which were part of previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools as prescribed by district school board rule. s. 1006.40(4), F.S., and s. 1006.40(3)(b), F.S.

²⁰ s. 1006.29(4), F.S.

²¹ The Discretionary Capital Outlay Levy is a statutorily authorized discretionary property tax that district school boards may levy without approval of the electorate. School districts are authorized to purchase equipment (including computers for classrooms) with this fund source. *See* s. 1011.71(2), F.S.

²² Specific Appropriation 100, § 2, ch. 2009-81, L.O.F.

²³ Department of Education website http://www.fldoe.org/bii/Instruct_Tech/EETT/

²⁴ s. 1011.62(6), F.S.

²⁵ Through the federal Race to the Top competitive grant program, the U.S. Department of Education encourages and rewards states to propose education reforms focused on helping struggling schools, elevating the effectiveness of teaching professionals and education leaders, building internationally recognized education standards and assessments, and improving state education data systems.

distributed to participating school districts according to the federal Title I allocation formula, and the remaining 50 percent will fund state-level projects designed to benefit all school districts statewide.²⁷ A requirement of the Memorandum of Understanding between the DOE and participating school districts is to ensure that each school possesses the technology, including hardware, connectivity, and other necessary infrastructure to provide teachers and students sufficient access to strategic tools for improved classroom instruction and computer-based assessment.²⁸

The bill amends section 1006.28, F.S., replacing the term textbook with instructional material to provide districts flexibility by allowing for multiple delivery options of instructional materials.

The bill amends section 1006.281, F.S., changing the name of learning management system to local instructional improvement system to align with the minimum standards of Race to the Top. The section provides guidelines and instructions for implementation of electronic local instructional improvement systems that provide teachers, staff, students and parents the ability to organize and access electronic instructional materials and other teaching and learning tools as determined to be appropriate by the school district.

The bill amends section 1006.29, F.S., restructuring the state instructional materials adoption process by replacing the Instructional Materials Committees with 3 expert reviewers appointed by the Commissioner of Education and a teacher or supervisor nominated by each school district superintendent. The reviewers will only evaluate electronic format of materials thereby eliminating the need to travel to meet as a group as was the process for hardback books. The statutory amendment also defines electronic and digital formats so the two may be distinguished for the adoption process. Also included is a timeline to phase-in, by grade group, digital instructional materials in the classroom.

The bill amends section 1006.33, F.S., to align terminology with the restructuring of the instructional materials adoption process and provide digital specifications that do not require Florida specific references at the point of student use for the instructional materials publisher bid process.

The bill amends section 1006.40, F.S., in order to continue to require school districts to use at least 50% of the funds allocated to purchase instructional materials on the state-adopted list. By the 2013-2014 fiscal year, the allocation can be used to purchase instructional materials on the state-adopted list in digital or electronic format. A district school board may continue to use the remaining 50 percent of the annual allocation to purchase materials, including library and reference books and nonprint materials, not included on the state-adopted list and for the repair and renovation of textbooks and library books.

The bill repeals section 1006.43, F.S., which eliminates duplicative and nonessential language pertaining to the instructional materials process.

The bill amends sections 1001.01, 1006.28, 1006.281, 1006.29, 1006.30, 1006.31, 1006.32, 1006.34, 1006.35, 1006.36, 1006.38, and 1006.39, F.S., to align terminology with the restructuring of the instructional materials adoption process.

Bonus Funding for Student Performance for Certain Courses and Diplomas

Section 1003.492, F.S., provides for students in career and professional academies to become professionally certified in high-demand fields. A list of high demand industry certifications is identified

American Recovery and Reinvestment Act of 2009, Section 14006(c), Public Law 111-5. See <http://www2.ed.gov/programs/racetothetop/eligibility.html>.

²⁶Press Release issued August 24, 2010, *Nine States and the District of Columbia Win Second Round Race to the Top Grants*, U.S. Department of Education. See <http://www.ed.gov/news/press-releases/nine-states-and-district-columbia-win-second-round-race-top-grants>.

²⁷American Recovery and Reinvestment Act of 2009, Public Law 111-5. See <http://www2.ed.gov/programs/racetothetop/eligibility.html>.

²⁸Florida Department of Education, *Florida's Race to the Top Application – Participating Local Education Agency Memorandum of Understanding*, p.8, December 9, 2009. See <http://www.fldoe.org/ARRA/Racetothetop.asp>.

and approved by the state workforce board.²⁹ As specified in State Board of Education rule 6A-6.0573, the State Board of Education approves an annual “Industry Certification Funding List” which is comprised of industry certifications from the comprehensive list that meet certain criteria³⁰. If the career academy student takes the appropriate courses, earns an industry certification on the SBE approved funding list, and graduates from high school, the school district earns a bonus of 0.3 FTE, or roughly \$1,100 per student.³¹

The bill requires the DOE to identify variable bonus weights based on the difficulty of obtaining the industry certification and the value of having the industry certification in terms of employment and wage earning capability. The bill maintains the maximum bonus at 0.3 FTE for students earning industry certification. The new rates are expected to be within the existing funding levels.

Add-on FTE Funding for Florida Virtual School

The Florida Virtual School (FLVS) is funded through the FEFP as a special district. An FTE for the FLVS is one student who has successfully completed six credits that shall count toward the minimum number of credits required for high school graduation. A student who completes less than six credits shall be considered a fraction of an FTE. Credit completed in excess of the minimum required for high school graduation is not eligible for funding.

The FLVS receives additional weighted FTE to be calculated by multiplying total public school unweighted FTE of the school by a factor of 0.114. The bill increases for the 2011-2012 fiscal year the factor used to calculate additional weighted FTE for the FLVS to 0.228. Essentially, this means for each public school student completing six credits the FLVS will generate 1.228 weighted FTE for funding purposes.

School District Discretionary Non-voted Capital Improvement Millage

Section 1011.71(3)(b), F.S., provides school boards with the flexibility to levy an additional discretionary 0.25 millage for critical operation needs or fixed capital outlay based on supermajority vote of school board and passage of a voter approved referendum in the 2010 general election. The referendum provides the school board with the authority to annually approve by a supermajority vote for the 2011-2012 and 2012-2013 fiscal years to levy 0.25 mills. There were 39 districts that submitted ballot language, and of those, 20 districts received voter approval. Of the 20 that were approved, 16 were approved for 0.25 mill for critical operations, 1 was approved for 0.25 mill for critical fixed capital outlay, and 3 were approved for 4-year voted millage as per section 1011.73(2), F.S.

For those districts that received voter approval for the 0.25 millage for critical operation needs or fixed capital outlay, the measure must be approved by a supermajority of the school board in the 2011-2012 and 2012-2013 fiscal years. The bill repeals the authority for school boards to levy the 0.25 mill additional levy for critical capital or operating needs after the 2010-2011 fiscal year, but allows the districts that received voter approval at the 2010 general election to levy the millage for the 2011-2012 and 2012-2013 fiscal years by supermajority vote of the school board. This millage will not be included in the FEFP for compression or for local funding.

1.50 Capital Improvement Millage Flexibility

The bill amends s. 1011.71(5), F.S., increasing the amount that school districts may expend per unweighted FTE student from the revenue generated by the levy of local capital improvement millage from \$100 to \$200 per FTE. These funds may be used for:

- New construction and remodeling projects included in the district’s educational plant survey.

²⁹ This list is also known as the “Comprehensive Industry Certification List.”

³⁰ State Board of Education rule 6A-6.0573

³¹ s. 1011.62(1)(p), F.S.

- Maintenance, renovation, and repair of existing school plants or of leased facilities to correct deficiencies.
- The purchase, lease-purchase, or lease of school buses.
- The purchase, lease-purchase, or lease of new and replacement equipment; computer hardware, including electronic hardware and other hardware devices necessary for gaining access to or enhancing the use of electronic content and resources or to facilitate the access to and the use of a school district's electronic learning management system, excluding software other than the operating system necessary to operate the hardware or device; and enterprise resource software applications that are classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support districtwide administration or state-mandated reporting requirements.
- Payments for educational facilities and sites due under a lease-purchase agreement entered into by a district school board.
- Payment of loans.
- Payment of costs directly related to complying with state and federal environmental statutes, rules, and regulations governing school facilities.
- Payment of costs of leasing relocatable educational facilities, of renting or leasing educational facilities and sites, or of renting or leasing buildings or space within existing buildings.
- Payment of the cost of school buses when a school district contracts with a private entity to provide student transportation services.
- Payment of the cost of the opening day collection for the library media center of a new school.
- The purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.
- Payment of the cost of premiums for property and casualty insurance necessary to insure school district educational and ancillary plants. Operating revenues that are made available through the payment of property and casualty insurance premiums from revenues generated under this subsection may be expended only for nonrecurring operational expenditures of the school district.

The bill further clarifies the types of property and casualty insurance premiums that may be paid from the revenue generated by the levy by referencing s. 624.605, F.S. to specifically allow payments for:

- (d) Burglary and theft. - Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause.
- (f) Glass. - Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings.
- (g) Boiler and machinery. - Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured; together with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as an incidental coverage which is part of a liability insurance contract.
- (h) Leakage and fire extinguishing equipment. - Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hose, pumps, and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against such loss or damage to such sprinklers, hose, pumps, and other fire extinguishing equipment or apparatus.

- (m) Elevator. - Insurance against loss of or damage to any property of the insured resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire, together with provision for medical, hospital, and surgical benefits to injured persons, irrespective of the legal liability of the insured, when issued as an incidental coverage which is part of a liability insurance contract.

Because there was no explicit definition of property casualty insurance, the premiums that districts have been assessed do not identify the portions of the premium that were applicable to the specific coverage areas. The premium costs included some purposes other than insurance for educational and ancillary plants, such as worker's compensation, school board liability, claims processing costs, and administrative costs resulting in audit citations for expenditure violations.

This bill also allows the Commissioner to waive the equal-dollar reduction required in s. 1011.71(6), F.S., for such expenditures during the 2008-2009 and 2009-2010 fiscal years which were related to the purchase of software and property and casualty insurance premiums based on the specific sections of s. 624.605, F.S., as described above.

B. SECTION DIRECTORY:

Section 1: Amends s. 1001.10, F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 2: Amends s. 1002.33, F.S., clarifying that capital outlay funds shared by school districts with a charter school in the workplace prior to July 1, 2010, have met the expenditure requirements for capital outlay funding; and authorizing systems of charter schools meeting certain requirements to be considered a local educational agency for the purpose of receiving federal funds.

Section 3: Amends s. 1002.45, F.S., requiring school districts to report contract prices for school district virtual instruction programs and requiring school districts to expend certain funds for technology infrastructure.

Section 4: Amends s. 1002.55, F.S., changing the maximum number of students per prekindergarten class in a private school-year VPK program from 18 to 20.

Section 5: Amends s. 1002.63, F.S., changing the maximum number of students per prekindergarten class in a private school-year VPK program from 18 to 20.

Section 6: Amends s. 1002.71, F.S., reducing the early learning coalition administrative percentage from 4.5 percent to 4.0 percent.

Section 7: Amends s. 1003.01, F.S., changing the definition of core courses to be counted for class size compliance.

Section 8: Amends s. 1003.03, F.S., allowing school districts to place new enrollments that come in after the October student membership count to be placed in existing classrooms provided that the district submits a plan to the Commissioner of Education that describes what the district will do to be in compliance the following school year.

Section 9: Amends s. 1003.492, F.S., authorizing, as part of the existing rulemaking authority used to specify the criteria for an "Industry Certification Funding List," the identification of variable FEFP bonus weights for the successful completion of industry-certified career and professional academy programs based on the difficulty of obtaining the industry certification and the value of having the industry certification in terms of employment and earning capability.

Section 10: Amends s. 1006.28, F.S., replacing the word "textbook" with "instructional material" to allow for multiple delivery options of instructional materials.

Section 11: Amends s. 1006.281, F.S., codifying and changing the name of learning management system to local instructional improvement system to align with the minimum standards of the Race to the Top grant.

Section 12: Amends s. 1006.29, F.S., restructuring the instructional materials adoption process to require reviewers to only evaluate electronic format of materials; defining electronic and digital formats; and providing dates to incorporate digital instructional materials in the classroom.

Section 13: Amends s. 1006.30, F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 14: Amends s. 1006.31, F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 15: Amends s. 1006.32, F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 16: Amends s. 1006.33, F.S., aligning terminology with the restructuring of the instructional materials adoption process and modifying bid specifications.

Section 17: Amends s. 1006.34, F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 18: Amends s. 1006.35, F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 19: Amends s. 1006.36., F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 20: Amends s. 1006.38., F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 21: Amends s. 1006.39., F.S., aligning terminology with the restructuring of the instructional materials adoption process.

Section 22: Amends s. 1006.40., F.S., requiring, by the 2012-13 school year, school districts to use 50% of the instruction materials categorical in the FEFP for the purchase of electronic or digital materials and providing flexibility in the materials purchased with the remaining 50% of funding.

Section 23: Repeals s. 1006.43, F.S., eliminating requirement for DOE to include a request for instructional materials funding in the legislative budget request.

Section 24: Amends s. 1011.62., F.S., incorporating, as part of the existing rulemaking authority used to specify the criteria for an "Industry Certification Funding List," the variable FEFP bonus weights for the successful completion of industry-certified career and professional academy programs based on the difficulty of obtaining the industry certification and the value of having the industry certification in terms of employment and earning capability; and provides for a one-year change of the value of student membership for certain students in the Florida Virtual School.

Section 25: Amends s. 1011.685, F.S., allowing flexibility for districts to use their class size reduction categorical operating funds if they are compliant with class size requirements.

Section 26: Amends s. 1011.71, F.S., repealing school board supermajority voted 0.250 millage levy.

Section 27: Amends s. 1011.71, F.S., increasing the amount that school districts may expend per unweighted FTE student from the revenue generated by the levy of local capital improvement millage from \$100 to \$200 per FTE; clarifying the definition of property and casualty insurance premiums

authorized in this section; and authorizing the Commissioner of Education to waive the equal-dollar reduction requirement for expenditures made during a specified time for property and casualty insurance and for the audit findings for a specified fiscal year related to the purchase of software.

Section 28: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill repeals the authority for school boards to levy the 0.25 mill additional levy for critical capital or operating needs after the 2010-2011 fiscal year, but allows the voter approved referendum at the 2010 general election to be levied for the 2011-2012 and 2012-2013 fiscal years. The levy is expected to generate \$32 million for the districts that received voter approval.

The bill allows districts more flexibility in spending general funds for operating purposes by increasing the amount that school districts may expend per unweighted FTE student from the revenue generated by the levy of local capital improvement millage from \$100 to \$200 per FTE. This change does not increase the amount of millage a district may levy.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct fiscal impact on the private sector.

D. FISCAL COMMENTS:

The bill conforms the statutes to the PreK-12 budget. The bill provides school districts additional fiscal flexibility by giving priority to funding for the core mission of classroom instruction and less emphasis on funding noncore functions. In addition, the bill makes a series of adjustments and reductions to special allocations in the FEFP funding formula to maximize funding in the base allocation for all districts. The bill also provides fiscal efficiencies and limits unnecessary spending.

The bill maximizes VPK funds and provides flexibility for VPK providers by changing the maximum number of students per voluntary prekindergarten (VPK) school-year program classroom from 18 to 20 students. This bill has no effect on per student funding, but would create an increase for the amount of funding per school year class room by \$5,124 in a classroom with 20 students.³²

³² Specific Appropriation 75, § 2, ch. 2010-152, L.O.F., sets the summer program BSA at \$2,179 and the school-year program BSA at \$2,562 for FY 2010-2011. Ss. 1002.55(2)(f) & 1002.63(7), F.S., sets the maximum number of students in a school year VPK program at 18 per classroom. \$2,562 x 18 = \$46,116; \$2,562 x 20 = \$51,240; \$51,240-\$46,116 = \$5,124.

In addition, the bill modifies the classroom teacher to student ratio for the regular school year voluntary prekindergarten (VPK) program from 1:10 to 1:11. For classrooms of 11 or fewer students the teacher must meet the requirement of s. 1002.55(3)(c) F.S. For school year program classrooms with at least 12, or up to 20 students, the second instructor is only required to pass a level 2 background screening.

The bill reduces the administrative rate for early learning coalitions from 4.5 percent to 4.0 percent providing an estimated savings of \$1.8 million.

The bill provides flexibility to school districts by requiring the difference in funds received by the school district from the FEFP and the amount negotiated with the school district virtual instruction providers to be used for the district's local instructional improvement system or other technological tools that are required to access electronic and digital instructional materials. There is an estimated 2,200 FTE participating in school district virtual instruction programs at an estimated average price of \$4,800³³. The estimated per student funding saved is estimated to be \$6,025³⁴, creating a difference of \$1,225 which is an estimated savings to the district of 20 percent. The savings is to be used for the district's local instructional improvement system or other technological tools that are required to access electronic and digital instructional materials. The actual amount available will vary by district and is unknown at this time. The bill also requires negotiated contract prices to be provided to the Department of Education by October 1 of each year.

The bill provides potential savings to school districts by clarifying the definition of core courses to be counted for class size compliance and allowing students enrolling in classes after the October student membership survey to be placed in existing classrooms provided that the district prepares a plan that describes how the district will be in compliance the following year. This year, there are 849 courses used in determining class size compliance. By clarifying the definition of core courses, there would be 288 courses resulting in savings to school districts due to a significant reduction to the non-compliance calculation due to the change in the number of classes counted toward class size compliance. The bill also continues to allow compliant districts flexibility in use of their class size reduction operation categorical funds.

The bill provides a financial incentive for career and professional academies to encourage students to obtain more difficult certifications by identifying variable bonus weights, to be incorporated in the FEFP industry certification bonus add-on, based on the difficulty of obtaining the industry certification and the value of having the industry certification in terms of employment and wage earning capability. The total add-on for this program continues to be capped at \$15 million.

The bill provides the Florida Virtual School an increase in additional weighted FTE to be calculated by multiplying total public school unweighted FTE of the school by a factor of 0.228 for the 2011-2012 fiscal year. The 2010-2011 fiscal year factor used is 0.114. The total add-on for this program is estimated to be \$15.8 million.

The bill provides cost savings and flexibility to school districts by modifying the instructional materials statutes. The bill aligns language with the minimum standards of Race to the Top and expands the options for instructional materials to include electronic and digital formats which will provide savings due to no printing costs. The bill restructures the instructional materials adoption process to require reviewers to only evaluate electronic format of materials reducing travel expenses for the Department of Education and the school districts. The bill also provides cost savings to publishers and the school districts by not requiring Florida specific references in the materials (such as FCAT or Sunshine State Standards benchmark crosswalks) thereby allowing products to be sold to other states resulting in reduced production expenses.

The bill also requires, by the 2012-2013 school year, school districts to use 50% of the instruction materials categorical for the purchase of electronic or digital materials and flexibility in the materials purchased with the remaining 50% of funding. This change accommodates the inclusion of electronic or digital materials as part of the potential cost savings in the instructional materials categorical to school districts.

³³ Florida Senate Interim Report 2011-215, dated October 2010.

³⁴ Estimated per student funding saved is based on the per student amount of the 2010-11 Third FEFP Calculation components of: Base Funding, Discretionary Compression, Exception Student Education Guaranteed Allocation, Supplemental Academic Instruction Allocation, Reading Allocation, State Discretionary Lottery Funds, Instructional Materials, Student Transportation, and Class Size Reduction Allocation.

The bill provides an estimated \$8.3 million savings in state costs by clarifying that revenues from the 0.250 mill will not be included in the FEFP. The bill repeals the authority for school boards to levy the 0.25 mill additional levy for critical capital or operating needs after the 2010-2011 fiscal year, but allows the voter approved referendum at the 2010 general election to be levied for the 2011-2012 and 2012-2013 fiscal years.

The bill allows districts more flexibility in spending general funds for operating purposes by increasing the amount that school districts may expend per unweighted FTE student from the revenue generated by the levy of local capital improvement millage from \$100 to \$200 per FTE.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

This bill may be subject to constitutional challenge, based on the class size provision contained in s. 1, Art. IX, state constitution. Specifically, a potential challenge could be made that this proposed language authorizes maximums in excess of the caps provided in the Florida constitution. In an advisory opinion to the Attorney General on the validity of the class size constitutional amendment, the Florida Supreme Court referred to the Legislature's role as intended by the initiative as follows:

Rather than restricting the Legislature, the proposed amendment gives the Legislature latitude in designing ways to reach the class size goal articulated in the ballot initiative.³⁵

The court also indicated that the primary purpose of the amendment is the legislative funding of reduced class size. This bill does not address the amount the Legislature appropriates for class size. Rather, it provides operational flexibility to school districts to meet the class size maximums, while assuring that children attending public schools obtain a high quality education.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Education the authority to establish guidelines for school districts to use when purchasing technological equipment from categorical funds within the FEFP.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the PreK-12 Appropriations Subcommittee reported the bill favorably with one amendment.

- Amendment 1 authorizes a reduction in the administrative rate for early learning coalitions from 4.5 percent to 4.0 percent.

On March 29, 2011, the Appropriations Committee reported the bill favorably with four amendments.

- Amendment one authorizes systems of charter schools meeting certain requirements to be considered a local educational agency for the purpose of receiving federal funds.

³⁵ *Advisory Opinion to the Attorney General re: Florida's Amendment to Reduce Class Size*, 816 So.2d 580, 584-85 (S.Ct. 2002).

- Amendment two provides for a one-year change to the value of student membership for certain students in the Florida Virtual School.
- Amendment three authorizes the Commissioner of Education to waive the equal-dollar reduction requirement for expenditures made during a specified time for property and casualty insurance premiums and for the audit findings for a specified fiscal year related to the purchase of software, if the commissioner determines that a school acted in good faith.
- Amendment four increases the amount that school districts may expend per unweighted full-time equivalent student from the revenue generated by the levy of local capital improvement millage. The amendment also clarifies the types of insurance premiums that may be paid from the revenue generated by the levy.